

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>JOHN L. AND SANDRA J. COSENTINO,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>GUNNISON COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 62061</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 1, 2013, Debra A. Baumbach and Brooke B. Leer presiding. Mr. John Cosentino, Esq. appeared on behalf of Petitioners. Ms. Sandra Cosentino was also present at the hearing. Respondent was represented by Arthur Trezise, Esq. Petitioners are protesting the 2013 classification of the subject property.

Subject property is described as follows:

**Parcel Number: 3435-000-00-071**  
**Address: 14434 State Highway 135, Gunnison County, Colorado**

The subject consists of a land area of 4.855 acres and a residence of 2,736 square feet with a 506 square foot garage. The residence was built in 1992. The construction is log and the residence has a septic system and a well for water.

Petitioners did not dispute the value of the subject property, only the classification is in dispute. Respondent assigned a value of \$327,240 for the subject for tax year 2013.

Mr. Cosentino referred to the Gunnison County 2013 Real Property Notice of Determination, Petitioner's Exhibit 5, that stated, "[s]ince the house is not owner occupied, it is considered to be non integral." Petitioners appealed this Notice of Determination arguing that the home did not need to be occupied on a full time basis in order to receive agriculture classification. According to Petitioners, the residence was not used as a rental property. Mr. Cosentino testified the residence was occasionally occupied by Petitioners. Mr. Cosentino

estimated Petitioners spent about 30 days at the property during the time period from January 1, 2011 to June 30, 2012.

Mr. Cosentino testified that he maintains the fencing, culverts, ditches, water and agriculture operation on the property. The agriculture operation is haying and grazing. The property is surrounded by larger agriculture properties, referred to as “ranches” by Mr. Cosentino. According to Mr. Cosentino, one of the adjacent property owners cuts the hay on the subject property and Mr. Cosentino manages the irrigation. Petitioners split the hay production with the neighbor. Mr. Cosentino testified that occasionally animals graze on the subject property. The grazing animals are owned by the adjacent property owner. Mr. Cosentino also testified that Petitioners transported their own animals from their other property on Ohio Creek to graze on the subject property.

Mr. Cosentino testified that the tools and implements to maintain the agriculture operations on the subject land are kept at the residence. Mr. Cosentino also testified that sometimes a tractor was parked on the property.

Respondent’s witness, Mr. George Lickiss, an appraiser for Gunnison County, testified that the subject residence was non integral to the agriculture operation based on his inspection. Mr. Lickiss inspected the property in September 2013 and testified that the home did not appear to have anyone living in it; and he did not see any animals or equipment on the property at the time of his inspection. According to Mr. Lickiss, there were no beds and the residence looked staged, as if for sale. Mr. Lickiss testified that the residence was inspected by another employee of the Assessor’s Office in 2012 and his thoughts were similar to Mr. Lickiss’s as to the occupancy of the home. Mr. Lickiss testified that the employees at the Assessor’s Office, that live in the Crested Butte area, told Mr. Lickiss that they drive by this property on a regular basis going to and from work and the property did not appear occupied.

Mr. Lickiss testified to the appraisal he prepared for the subject property. The valuation date was June 30, 2012. Three sales were used from the Crested Butte South Subdivision. The sales ranged in sale prices from \$374,000 to \$545,000. After making adjustments for living area, land size and age, the adjusted sales ranged from \$389,520 to \$447,560. A value of \$425,000 was concluded for the subject. Mr. Lickiss concluded that the residence was not integral to the agriculture operations because it was not occupied. According to Mr. Lickiss, if the residence is deemed not integral, up to two acres supporting land with the residence must be valued by the market approach. The remaining land area used for agriculture (hay and grazing) is 2.85 acres. Mr. Lickiss’s value conclusion was \$416,570.

Petitioners presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2013.

After careful consideration of the testimony and exhibits presented at the hearing, the Board was convinced Petitioners met the statutory requirements for “integral to an agricultural operation.” Although Petitioners occupy the residence on a part time basis, there is no reference in the statute as to a specific time period the residence must be occupied to qualify as being integral for agricultural operations. The statute focuses on specific criteria in the agricultural

management and operations. Section 39-1-1021 (I) (B), C.R.S. states: a residential improvement shall be deemed to be “integral to an agricultural operation” for purposes of sub-paragraph (A) of this subparagraph (I) if an individual occupying the residential improvement either regularly conducts, supervises, or administers material aspects of the agriculture operation. The Board was convinced by Petitioners’ testimony that they regularly maintain and conduct the agricultural operations during the growing and grazing seasons; they are the owners and the property has not been rented or occupied by a third party.

**ORDER:**

Respondent is ordered to change the subject’s classification to agriculture for 2013. The Gunnison County Assessor is ordered to update his/her records accordingly.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 15th day of April, 2014.

**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

Debra A. Baumbach

*Brooke B. Leer*

Brooke B. Leer

I hereby certify that this is a true  
and correct copy of the decision of  
the Board of Assessment Appeals.

*[Signature]*  
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Milla Lishchuk

